UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. **1:18-CR-377**

ERNEST RUFFIN,

Defendant.

THOMAS J. McAVOY,
Senior United States District Judge

DECISION & ORDER

I. INTRODUCTION

Defendant Ernest Ruffin is charged in the Superseding Indictment with possession of a firearm and ammunition by a prohibited person, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). *See* Sup. Indict., Dkt. No. 21. He moves to suppress the firearms and ammunition discovered in his suitcase bag on January 1, 2018, arguing that the warrantless search of this closed container violated his rights under the Fourth Amendment. *See* Dkt. No. 14.[1] The Court held a factual suppression hearing on June 24, 2019. The following

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[1]Defendant's motion sought suppression of only a Mossberg, Model 590, 12-gauge firearm, which was the subject-firearm in the Indictment. *See* Dkt. No. 14 (motion); Dkt. No. 1 (Indictment). Subsequent to filing the motion, Defendant was charged in the Superseding Indictment with knowingly possessing (a) a Mossberg, Model 590, 12-gauge firearm, (b) 25 rounds of R-P .40 caliber Smith and Wesson ammunition, ©) 15 rounds of Federal 12-gauge shotgun shells, and (d) 23 rounds of Federal Cartridge 9 mm Luger ammunition. *See* Dkt. No. 21 (Superseding Indictment). The evidence at the suppression hearing revealed that this firearm and the ammunition were all discovered in Defendant's bag on January 1, 2018. The evidence also revealed that the police discovered a Springfield Armory pistol in Defendant's bag on January 1, 2018. *See* Gov. Ex. 14. The government contends it will seek to admit the Springfield Armory pistol at trial to establish a connection between it and the ammunition for this firearm discovered in the bag. Because all (continued...)

constitutes the Court's findings of fact and conclusions of law relative to the suppression motion.

II. FINDINGS OF FACT

Based upon the credible evidence presented at the hearing, the following facts are established.

At about 4:15 PM on January 1, 2018, 911 dispatchers received a phone call from a woman ("Complainant") reporting a domestic incident at her apartment in the Foxrun Apartments located in Clifton Park, New York. *See* Gov. Ex. 1 (DVD audio tape of the 911 call), 00:00 – 01:00. The incident was reportedly between Complainant and Ernest Ruffin. Complainant explained to the dispatcher that, after locking her boyfriend (Ruffin) out of her apartment, he broke down the door, reentered the apartment, and proceeded to engage in a physical altercation resulting in him throwing her to the ground. *Id.*, 1:15 – 1:30.

In her call to the dispatchers, Complainant explained that she has left her apartment and entered her vehicle, a gray Jeep, and was sitting in the vehicle in a parking lot adjacent to the entrance to her apartment. *Id.*, 1:30 – 1:50; 3:00. She identified herself and went on to tell the 911 dispatcher that she thinks her boyfriend has a gun in his bag. *Id.,* 1:00 – 1:15. During the phone call, Complainant indicated to the dispatcher that her boyfriend, whom she identifies as Ernest Ruffin, was outside the apartment on the steps "carrying all his stuff." *Id.*, 1:50. She described Ruffin's appearance (*id.*, 3:30), and indicated that his bag is "like a duffle bag" (*id.*, 5:25), but explains that her knowledge of any weapons was solely

[1](...continued)
these items were discovered at the same time in the same bag, the Court presumes that Defendant seeks to suppress both firearms and the ammunition recovered on this date.

from a statement Ruffin made to her while she was attempting to call the police. *Id.*, 3:25. Specifically, she reported him telling her that he had a gun in his bag after she told him she was calling the police. *Id.*, 4:40. Complainant indicated that she never actually saw a weapon in Ruffin's possession. *Id.*, 5:28.

Soon after Complainant initiated her phone call to 911, New York State Trooper Kyle Conlon left the New York State Police Barracks in Clifton Park and traveled to the scene. Trooper Conlon was provided with a description of the male suspect and advised that the suspect may possess a gun. Upon arrival at the scene, Trooper Conlon saw a male suspect outside in front of the Foxrun Apartments near the entrance to Complainant's apartment. The suspect was walking from the front staircase where the subject-bag was located. Trooper Conlon testified that the suspect was initially close to the bag but walking toward the Jeep where Complainant was located in a parking lot approximately 80-100 feet from the staircase. Trooper Conlon observed Complainant pointing at the suspect. Other than the suspect and Complainant in her Jeep, there were no other individuals in the area at the time. When the suspect was approximately 40 feet away from the bag, Trooper Conlon positively identified him as matching the description provided by the 911 dispatcher. At this time, Trooper Conlon exited his vehicle, pointed his service revolver at the suspect, and issued commands for the suspect to put his hands up, to stop walking, to stop moving, and to put down the cellular telephone that the suspect had to his ear. The suspect did not immediately comply. When he did stop moving, Trooper Conlon instructed the suspect to put his cellular telephone in his pocket, raise his hands, and to turn around so Trooper Conlon could see whether any weapons were visible in the suspect's waistband area. The suspect complied with these commands. Trooper Conlon then instructed the suspect to

kneel down, cross his legs at the ankles, and sit back onto his ankles. The suspect complied with these instructions. New York State Trooper Michael Menges and Saratoga County Sheriff's Deputy S. Lyons arrived at the scene at this time. As Trooper Conlon provided cover, Trooper Menges and Deputy Lyons approached the suspect, pat-frisked him, handcuffed him, placed him in the back seat of a patrol vehicle, and transported him to the to the New York State Police Barracks. *See* Gov. Ex. 7, at 4.

Trooper Conlon interviewed Complainant, who identified the apprehended suspect as Ruffin, and told Trooper Conlon that Ruffin had damaged the front door of her apartment and said that he had weapons. Complainant identified the bag on the front steps of the apartment complex as belonging to Ruffin. This bag was photographed by the police as it sat on the front steps of the apartment complex. *See* Gov. Exs. 8, 9, 10.

Trooper Conlon relayed the information he learned from Complainant to New York State Trooper Daniel Klocek,[2] and to New York State Police Investigator Anthony DiLallo who arrived on the scene after the suspect was secured in the police vehicle. Trooper Conlon, Trooper Klocek, and Inv. DiLallo walked through the apartment with Complainant to ensure there were no persons, threats, or firearms located therein, and deemed the apartment secured based on what they observed. Trooper Conlon also observed the extensive damage to the apartment door. *See* Gov. Ex. 7, at p. 4. Inv. DiLallo, who was the on-scene supervisor, instructed Trooper Klocek to begin an inventory of Ruffin's personal property located on the front steps outside Complainant's apartment. Trooper Klocek testified that it is the policy of the New York State police, with which he was familiar

[2] At the time of the hearing, Daniel Klocek was an Investigator with the New York State Police. For purposes of this decision, the Court will refer to him by the rank he held at the time of the events in issue.

based upon his approximately 6 years of service at the time of the incident, to conduct an inventory of items of personal property that an arrestee has with him at the time of arrest. Inv. DiLallo, who had approximately 17 years of service with the New York State Police at the time of the incident, testified that it is the policy of the New York State police to conduct an inventory of an arrestee's property if he does not have direct observation or contact with such property. The guidelines and protocol of the New York State Police for such inventories, as set forth in Article 31E of the New York State Police Manual ("Manual"), was entered into evidence for purposes of the hearing. *See* Gov. Ex. 2. The Manual provides, *inter alia*, that "when safe to do so," New York State Police officers "shall conduct an inventory of the personal property possessed by a person who has been taken into custody." *Id.* at 31E3(b)(1). The Manual further provides that the purposes of such inventories are to safeguard valuables in the person's property, to accurately record the contents of the property to protect the New York State Police against claims of loss, and to protect New York State Police officers and civilians from any potential dangers contained in the property. *Id.*

At 4:56 PM, Trooper Klocek began this personal inventory. The suitcase bag, which was already partially opened, was very full with sneakers and miscellaneous items of clothing on the top. *See* Gov. Ex. 10. Trooper Klocek indicated that he did not want to begin strewing about the clothing along the sidewalk, so he moved to the bottom of the bag which was zippered shut. He unzipped the bottom portion of the bag and could see a fleece blanket inside. He pressed down on the fleece bank and could feel a hard object under it. He partially lifted the fleece blanket and saw two skull masks, a back Mossberg shotgun,

and multiple rounds of ammunition. At this point he folded the blanket back over the items he observed, zipped the bag back up, and advised Inv. DiLallo. Because it was getting dark out, there was snow on the ground, there were a lot of personal effects that had to be inventoried, Inv. DiLallo instructed Trooper Klocek to stop the inventory, secure the bag and its contents in his patrol vehicle, and to continue the inventory at the Clifton Park State Police Barracks. None of the personal property was cataloged on the New York State Police Personal Property Record (Genl.-116) forms while at the scene.

Complainant signed a supporting deposition in Trooper Conlon's patrol vehicle while at the scene. In this supporting deposition, Complainant alleges, *inter alia*, that Ruffin kicked open the door to her apartment "damag[ing] it greatly," "forcefully use his hands and threw [Complainant] to the ground by grabbing [her] around the neck area," and then grabbed Complainant and told her if she contacted the police that it "would be a mistake because he had a gun in his bag with him." Gov. Ex. 6.

Once at the barracks, Trooper Klocek, Inv. DiLallo, Trooper Menges, and New York State Police Senior Investigator Michael Student conducted an inventory of all the items of personal property that Ruffin had with him at the time of his arrest, including the contents of his suitcase bag. Trooper Klocek testified that the officers conducted this inventory in accordance with the guidelines and protocol set forth in the Manual. Likewise, Sr. Inv. Student, who had over 30 years of service with the New York state Police and was familiar with the guidelines and protocol set forth in the Manual, testified that the inventory at the barracks was conducted in accordance with these guidelines and protocol. Trooper Klocek, Inv. DiLallo, and Sr. Inv. Student testified that each item was removed from the bag, photographed, and catalogued on New York State Police Personal Property Record (Genl.-

116) forms. *See* Gov. Exs. 3 and 4 (Genl.-116 forms); Gov. Ex. 11-16 (photographs of some of the items inventoried). Items discovered in the bag included a "Springfield Armory XD 40 semi-automatic pistol S/N US432741, one pistol magazine containing 9 rounds of 40S&W ammunition, one plastic bag containing 23 rounds of 9mm ammunition, one plastic bag containing 16 rounds of 40S&W ammunition, one Mossberg model 590 MD590 12ga S/N V0674691, [and] one box of Federal Ammunition containing 15 rounds of 12 ga rifled slugs." Gov. Ex. 3, ¶¶ 28-33.

III. CONCLUSIONS OF LAW

The government argues that the initial search of defendant's bag outside the Foxrun Apartments falls under the exigent circumstances exception to the warrant requirement, was justified by the doctrine of abandonment, and was part of a proper inventory search. Alternatively, the government argues that if the initial search was improper, the firearms and ammunition would inevitably have been discovered pursuant to a valid inventory search following defendant's arrest. The Court addresses these issues in turn.

a. Exigent Circumstances

Contrary to the government's argument, there is no basis to apply the exigent circumstances exception to the warrant requirement. Under the exigent circumstances exception, "the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests." *Welsh v. Wisconsin*, 466 U.S. 740, 749–50 (1984). "The Supreme Court has noted that a warrantless search of luggage taken from a suspect at the time of arrest may be justified if 'officers have reason to believe [it] contains some immediately dangerous instrumentality, such as explosives,' because 'it

would be foolhardy to transport it to the station house without opening the luggage and disarming the weapon.'" *United States v. Cancel*, 167 F. Supp. 3d 584, 593 (S.D.N.Y. 2016)(quoting *United States v. Chadwick*, 433 U.S. 1, 15 n.9 (1977), *abrogated on other grounds by California v. Acevedo*, 500 U.S. 565 (1991)).

Here, Trooper Klocek testified that after he discovered the shotgun and ammunition in the bag, he zippered the bag closed and placed it in his vehicle for transport to the barracks without any attempt to make sure the firearm was safe. This testimony evinces a lack of concern by the police for the immediate dangerousness of the weapon. Thus, the government has failed to meet its heavy burden of demonstrating that the exigent circumstances exception to the warrant requirement applies in this matter.

b. Abandonment

There is also no basis to apply the doctrine of abandonment to justify the warrantless search of defendant's bag. "'The Fourth Amendment does not protect abandoned or voluntarily discarded property because any expectation of privacy that may have existed becomes irrelevant the moment it is abandoned.'" *Jones v. Meehan*, No. 14 CIV. 6402 (KPF), 2018 WL 459662, at *10 (S.D.N.Y. Jan. 16, 2018)(quoting Anip Patel, *The Constitutionality of DNA Sampling of Arrestees*, 13 U. Pitt. J. Tech. L. Pol'y 1, 25 (2012)); *see also United States v. Lee*, 916 F.2d 814, 818 (2d Cir. 1990) ("When a person voluntarily abandons property, ... he forfeits any reasonable expectation of privacy that he might have had in the property."); *United States v. Levasseur*, 816 F.2d 37, 44 (2d Cir. 1987) ("[A] warrantless search or seizure of abandoned property does not violate the Fourth Amendment.")(citing *Abel v. United States*, 362 U.S. 217, 240-41 (1960) ("There can be

nothing unlawful in the government's appropriation of ... abandoned property.")). "Abandonment is a question of fact, to be decided in objective terms on the basis of all the relevant facts and circumstances, and not on the basis of leasehold interests or other property rights." *Levasseur*, 816 F.2d at 44 (citations omitted). In determining whether there has been an abandonment, a court must focus on the intent of the person who purportedly abandoned the property. *United States v. Moskowitz*, 883 F.2d 1142, 1147 (2d Cir.1989); *United States v. Quashie*, 162 F. Supp. 3d 135, 141 (E.D.N.Y. 2016). "Intent may be inferred from words spoken, acts done, and other objective facts." *Lee*, 916 F.2d at 818. The government bears the burden of proof in establishing that defendant abandoned the property in question. *United States v. Bulluck*, No. 09 CR. 652 (PGG), 2010 WL 1948591, at *7 (S.D.N.Y. May 13, 2010); *see United States v. Carter*, No. 86 Cr. 700(NG), 1987 U.S. Dist. LEXIS 9636, at *8–9 (S.D.N.Y. Oct. 23, 1987) ("Since the search was admittedly warrantless, the burden was on the Government to establish by a preponderance of the evidence that Carter abandoned the property.").

The government has failed to establish that defendant voluntarily abandoned his personal property located on the outside steps of the Foxrun Apartments. The facts demonstrate that after defendant was ejected from Complainant's apartment, he remained by the property while speaking on his cellular telephone. Objectively viewed, this conduct is consistent with defendant attempting to arrange for someone to pick up him and his property. Although defendant began walking away from the property when Trooper Conlon arrived, the evidence indicates that defendant walked only a short distance toward Complainant sitting in her Jeep in a nearby parking lot when he was confronted by Trooper

Conlon and then arrested by the police. The short distance that defendant walked toward Complainant, his girlfriend until the events occurring a short time earlier, may indicate that defendant was attempting to speak with Complainant but it does not, by itself, establish that defendant intended to abandon his property. *See United States v. Jackson*, No. 10 CR 783 NRB, 2011 WL 1431983, at *12 (S.D.N.Y. Apr. 12, 2011)("Assuming that Jackson dropped the bag after the police officers arrived, as Jackson states in his declaration, we cannot conclude that this action alone evidenced Jackson's intent to abandon the bag."). No proof was offered that defendant disclaimed ownership of the property, *see United States v. Welbeck*, 145 F.3d 493, 498 (2d Cir.1998) ("Welbeck cannot be heard to complain that the officers violated his privacy interest in a bag he denied was his."); *Lee*, 916 F.2d at 818 ("Based on these unequivocal disclaimers, the district court properly found that Lee intended to abandon his suitcase ..."); *United States v. Naut*, No. 06 Cr. 601(JFK), 2007 WL 3084978, at *9 (S.D.N.Y. Oct. 19, 2007) (holding that the defendants abandoned a bag by dropping it, disclaiming ownership in response to police questioning, and thereafter consenting to the search of the bag); *United States v. Bass*, No. 95 Cr. 672(AGS), 1996 WL 32426, at *3–6 (S.D.N.Y. Jan. 26, 1996) (holding that the defendant had abandoned a bag by storing the bag in one train car, sitting in another train car, and twice disclaiming ownership in response to police questioning); *United States v. Hincapie*, No. 90 Cr. 237(SWK), 1990 WL 144131, at *1–3 (S.D.N.Y. Sept. 27, 1990) (holding that the defendant had abandoned a bag where the defendant, upon observing a police presence, turned on his heels and reentered a suite with a bag, exited minutes later, again with a bag, and then dropped the bag and disclaimed ownership of it), or that he attempted to flee when he saw

Trooper Conlon arrive to avoid his connection with the contraband located inside the bag. *See United States v. Batista*, No. 98 CR. 466 (TPG), 1999 WL 33450, at *3-*4 (S.D.N.Y. Jan. 27, 1999)("The court concludes from all the relevant facts in the instant case that Batista dropped the bag not out of 'instinctive' compliance with the Detective's command to stop, but quite to the contrary, with the intent to flee the advancing officer while leaving the bag behind. . . . Batista's efforts to escape . . . demonstrate an intent to abandon the bag and the cocaine contained inside."); *see, e.g.*, *United States v. Arboleda*, 633 F.2d 985, 991 (2d Cir.1980) (holding that the defendant "had no legitimate expectation of privacy with respect to an object which he threw outside the apartment with the objective of getting rid of it before it could be seized by the officers."). Thus, the government has failed to prove that defendant abandoned his personal property at the date and time in issue.

c. Inventory Search

The Court next addresses the government's inventory search arguments. An inventory search is "an incidental administrative step following arrest and preceding incarceration" that "constitutes a well-defined exception to the warrant requirement." *Illinois v. Lafayette*, 462 U.S. 640, 643–44; *see also id.* at 646 ("At the stationhouse, it is entirely proper for police to remove and list or inventory property found on the person or in the possession of an arrested person who is to be jailed."); *Colorado v. Bertine*, 479 U.S. 367, 371 (1987)(Inventory searches are "a well-defined exception" to the Fourth Amendment warrant requirement). A warrantless inventory search allows police to search a person's belongings to (1) ensure officer safety, (2) secure any valuables for safe-keeping, and (3) protect the police against false claims of damage or loss concerning the property. *South*

Dakota v. Opperman, 428 U.S. 364, 369-70 (1976); *Bertine*, 479 U.S. at 372. In order for an inventory search to be lawful, it must be conducted pursuant to established inventory procedures. *Lafayette*, 462 U.S. at 648. Such inventory procedures may be proven by reference to written regulations or by testimony regarding standard practices. *United States v. Thompson*, 29 F.3d 62, 65 (2d Cir.1994). Further, officers must act in good faith according to these inventory procedures and not for the sole purpose of investigation. *Bertine*, 479 U.S. at 372–75 & n. 6. An inventory search may not be used as "a pretext for a general rummaging in order to discover incriminating evidence." *Thompson*, 29 F.3d at 65–66 (citation omitted).

The credible evidence establishes that the police were called to the Foxrun Apartments based on a report of a domestic dispute in which a male suspect allegedly broke down a door, entered Complainant's apartment, and knocked Complainant to the floor. Responding officers were advised that the suspect indicated that he had a gun in a bag he had with him. Upon arrival, the police observed an individual near a suitcase bag on the front steps outside the Foxrun Apartments. The suspect, later identified as Ruffin, matched the description given by Complainant, and was taken into custody by the police.[3] Complainant met with the police and recounted her allegations that Ruffin broke down her apartment door, and Trooper Conlon observed the excessive damage to the door. Gov. Ex.

[3] The Court notes that in the New York State Incident Report entered into evidence at the hearing, Trooper Menges indicates that upon frisking Ruffin, he discovered a quantity of marijuana. *See* Gov. Ex. 7, at 5. This provided probable cause to arrest Ruffin for violating N.Y. Penal Law § 221.05. *See* N.Y. Penal Law § 221.05 ("A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana."); *United States v. Bignon*, No. 18-CR-783 (JMF), 2019 WL 643177, at *3 (S.D.N.Y. Feb. 15, 2019)("[T]he Court concludes that there was probable cause to arrest Bignon for unlawful possession of marijuana, in violation of New York Penal Law § 221.05."); *see also* N.Y. Crim. Pro. Law, §§ 140.05, 140.10(1)(a) & (2), and 1.20(39).

7, at 4. This provided probable cause to arrest Ruffin for Criminal Mischief in the Third Degree, in violation of N.Y. Penal Law § 145.05 (02).[4] Upon Ruffin's arrest the police were justified in impounding the personal effects he had with him at the time, including the suitcase bag which Complainant identified as belonging to Ruffin. *See United States v. Perea*, 986 F.2d 633, 643 (2d Cir. 1993)("When a person is arrested in a place other than his home, the arresting officers may impound the personal effects that are with him at the time to ensure the safety of those effects or to remove nuisances from the area.")(internal quotation marks omitted). Moreover, there was no evidence presented that Complainant, who had just locked Ruffin out of her apartment, or anyone else, was present to retrieve Ruffin's personal property left on the outdoor front steps of the Foxrun Apartments. This provided further justification for the police to take custody of the suitcase bag. *See United States v. Morillo*, No. 08 CR 676, 2009 WL 3254431, at *15 (E.D.N.Y. Oct. 9, 2009)("[I]n this case, defendant had no friend or family member at the scene and, therefore, the officers had no choice but to take the backpack to the precinct. Moreover, [the officer] testified that even if someone had been present, his practice is to perform an inventory search before returning any property to a defendant or a third party, because it is necessary to know exactly what property is being returned."); *see also Cancel*, 167 F. Supp. 3d at 596–97

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[4]N.Y. Penal Law § 145.05(2), provides in pertinent part:

> A person is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:
>
> * * *
>
> 2. damages property of another person in an amount exceeding two hundred fifty dollars.

("Cancel was not accompanied by friends or family during his arrest, transport, or processing at the precinct, and there is no indication that anyone intended to join him at the stationhouse in order to retrieve his belongings.").

The Court credits the testimony offered by the government witnesses that the search of the suitcase bag was initiated pursuant to the New York State Police's established inventory procedures. Further, the New York State Police Manual at Article 31E3(b) provides that, "[w]hen safe to do so," an officer "shall" conduct an inventory of the personal property possessed by a person who is been taken into custody. Gov. Ex. 2, at 2. It was clearly "safe" to commence an inventory of Ruffin's personal property outside the Foxrun Apartments. Although the Manual does not explicitly provide that such inventory may be conducted in the field, it also does not instruct that it must be conducted at the police barracks. The fact that the inventory was started in the field does not, by itself, invalidate the inventory search. *See Bertine*, 479 U.S. at 368 (upholding inventory search of vehicle carried out after defendant was taken into custody but before removal of the vehicle to an impoundment lot); *see also United States v. Sobers*, No. 17-CR-0681, 2018 WL 1936123, at *3 (E.D.N.Y. Apr. 24, 2018)("Inventory searches are usually conducted at police stations, but the Fourth Amendment does not require that they be conducted at any particular location.")(citing *Mendez*, 315 F.3d 132, 137, n. 3; *United States v. Morillo*, No. 08-CR-676 (NGG), 2009 WL 3254431, at *8 (E.D.N.Y. Oct. 9, 2009)).

However, the Court is troubled by the fact that there was no evidence presented that the police attempted to document Ruffin's property at the scene. The Manual provides that "[p]roperty to be documented shall include any items that a member takes control over and will not remain continuously under the direct observation/possession of the person while in

custody. Any item carried on the person, as well as the contents of bags or containers carried by the person, shall be documented on the Personal Property Record (GENL-116)." Gov. Ex. 2, at 2. This lack of documentation at the scene may have been due to the waning lighting conditions requiring the inventory to be conducted at the State Police Barracks. But the absence of evidence that the police attempted to document the items of personal property at the scene, combined with the cessation of the search once the firearms and ammunition were discovered, raises a concern that the initial search was merely a pretext for a general rummaging through the property to discover the gun that Ruffin told the Complainant he had in his bag. Nevertheless, because the government's alternative argument is dispositive of the instant motion, the Court proceeds to the inevitable discovery doctrine presuming without deciding that the initial search was improper under the Fourth Amendment.

Under the inevitable discovery doctrine, evidence obtained as a result of an unconstitutional search need not be suppressed if the government can "prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police." *Nix v. Williams*, 467 U.S. 431, 447 (1984); *see also United States v. Babilonia*, 854 F.3d 163, 178 (2d Cir. 2017);[5] *United States v. Heath*, 455 F.3d 52, 55 (2d Cir. 2006);[6] *United States v. Mendez*, 315 F.3d 132, 137-38 (2d

[5]("[A]fter a lawful arrest (for example, after a traffic violation) where a search incident to arrest is not justified, evidence recovered from an immediately ensuing search may be admissible nevertheless if the contents would inevitably have been discovered in a permissible inventory search.") (internal quotation marks and citation omitted)

[6] ("Under the 'inevitable discovery' doctrine, evidence obtained during the course of an unreasonable search and seizure should not be excluded 'if the government can prove that the evidence would have been obtained inevitably' without the constitutional violation.") (quoting *Nix*, 467 U.S. at 447).

Cir. 2002);[7] *United States v. Griffiths*, 47 F.3d 74, 77 (2d Cir.1995).[8] The government's burden in establishing inevitable discovery is a preponderance of the evidence, *Nix*, 467 U.S. at 444, and in this Circuit, the Court must find with "a high level of confidence that each of the contingencies required for the discovery of the disputed evidence would in fact have occurred." *Heath*, 455 F.3d at 55; *see United States v. White*, 298 F. Supp. 3d 451, 457 (E.D.N.Y. 2018)(same). "Proof of inevitable discovery 'involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment and does not require a departure from the usual burden of proof at suppression hearings.'" *Cancel*, 167 F. Supp. 3d at 594 (quoting *Nix*, 467 U.S. at 444 n. 5). The Court must "determine, viewing affairs as they existed at the instant before the unlawful search, what would have happened had the unlawful search never occurred." *United States v. Eng*, 971 F.2d 854, 861 (2d Cir. 1992); *see White*, 298 F. Supp. 3d at 457 (same).

"In the inventory search context, the inevitable discovery doctrine allows for the admission of otherwise alleged impermissibly obtained evidence where the government proves: '(1) that the police had legitimate custody of the ... property being searched, so that an inventory search would have been justified; (2) that when the police in the police agency in question conducted inventory searches, they did so pursuant to 'established' or

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[7]("Under the inevitable discovery doctrine, evidence that is illegally obtained will not be suppressed if the government can prove that the evidence would have been obtained inevitably even if there had been no statutory or constitutional violation." In cases in which the Government claims inevitable discovery on the basis of inventory search procedures, "the court typically concludes that even if the invalid search had not been conducted, the evidence would nonetheless have been discovered in the course of a valid inventory search conducted pursuant to standardized, established procedures.")

[8](Under the inevitable discovery doctrine, "evidence otherwise obtained in violation of the Fourth Amendment is, nevertheless, admissible if the government establishes that the evidence would inevitably have been discovered by lawful means.")

'standardized' procedures, and (3) that those inventory procedures would have 'inevitably' led to the 'discovery' of the challenged evidence.'" *Sobers*, 2018 WL 1936123, at *3 (quoting *Mendez*, 315 F.3d at 137). The government has met its burden of proof with respect to each element.

First, the government has proven that even without the discovery of the shotgun and ammunition during the initial search, the police had probable cause to arrest Ruffin. As indicated, before the initial search of the bag, the police had probable cause to arrest Ruffin for Criminal Mischief in the Third Degree, in violation of N.Y. Penal Law § 145.05 (02). As also indicated, upon Ruffin's arrest the police were justified in impounding the personal effects he had with him at the time, including the suitcase bag. *See Perea*, 986 F.2d at 643. Thus, the police had legitimate custody of the suitcase bag thereby justifying an inventory search of its contents. The Court has a high level of confidence that Ruffin's arrest on this charge, and the impoundment of his suitcase bag situated on the front steps of the Foxrun Apartments, would in fact have occurred even if the shotgun and ammunition were not discovered at the scene.

Second, the inventory at the State Police Barracks was conducted in accordance with the established routine procedures incident to the booking and detention of a suspect as testified to by Trooper Klocek, Inv. DiLallo, and Sr. Inv. Student, and as contained in the New York State Police written protocol for such searches. *See* Gov. Ex. 2. The evidence establishes that Trooper Klocek, Inv. DiLallo, and Sr. Inv. Student acted in good faith upon the State Police procedures in conducting the inventory at the Barracks, and did not search Defendant's property solely for investigatory reasons.

Third, the Court has a high level of confidence that the New York State Police inventory search procedures would have inevitably led to the discovery of the challenged evidence. These procedures instruct New York State Police officers to empty items which may contain weapons or contraband by turning them inside out or upside down. Based on Complainant's report that Ruffin claimed to have a gun in his bag, the Court has a high level of confidence that even without the discovery of contraband at the scene State Police officers would have throughly searched the Coleman suitcase and discovered the firearms and ammunition. Certainly, in inventorying the entire contents of the suitcase bag the police would have inevitably discovered the Mossberg 12-gauge shotgun, the Springfield Armory semi-automatic pistol, and the various caches of ammunition contained in a pistol magazine, in two plastic bags, and in a box. *See Cancel*, 167 F. Supp.3d at 594–97 (holding that a gun was admissible because it would have inevitably been discovered during an inventory search). Thus, the Court finds that the firearms and ammunition found in defendant's bag on January 1, 2018 were inevitably discovered pursuant to the valid inventory search conducted at the New York State Police Barracks following defendant's arrest.

IV. CONCLUSION

For the reasons discussed above, defendant's motion to suppress the firearms and ammunition found in his bag, Dkt. No. 14, is **DENIED**.

IT IS SO ORDERED.

Dated: July 9, 2019

Thomas J. McAvoy
Senior, U.S. District Judge